

PATRIOT Act Reauthorization
H.R. 3199

H.R. 3199 Makes All of the Problems in the PATRIOT Act Permanent

- H.R. 3199 passed the Judiciary Committee on a straight party line vote. The majority rejected 36 of 39 Democratic amendments.
- H.R. 3199 Makes all the sunset provisions permanent, except Section 206, John Doe Roving Wiretaps, and Section 215, Requests for Records and Things, which are renewed for 10 years each.
- The few small amendments to the original PATRIOT Act in H.R. 3199 don't even begin to address the overly intrusive provisions passed four years ago. Consider:

REQUESTS FOR RECORDS AND THINGS

- Section 215: lets the FBI get any record or any tangible thing after only a rubber stamp from the secret Foreign Intelligence Surveillance Act (FISA) Court, and after only a showing of "relevance" to a terror investigation. Before the PATRIOT Act, these requests at least had to be directed at "agents of a foreign power." Now they can be used against anyone, including American citizens, even if they are not suspected of doing anything wrong. Recipients are gagged from ever telling anyone they received the request.
- Section 505, National Security Letters: lets the FBI get financial, telephone, internet and consumer records "relevant" to an intelligence investigation without judicial approval. Before the PATRIOT Act, these requests at least had to be directed at "agents of a foreign power." Now they can be used against anyone, including American citizens, even if they are not suspected of doing anything wrong. Recipients are gagged from ever telling anyone they received the request. A federal district court struck down this provision as UNCONSTITUTIONAL, but the Administration keeps using it.

SEARCHES, SEIZURES AND SURVEILLANCE

- Section 213, Sneak and Peek: lets the FBI execute a search or seizure warrant without notifying the owner for 6 months, if providing advanced notice would interfere with the investigation. **THIS SECTION IS NOT LIMITED TO TERRORISM, AND IS NOT SCHEDULED TO SUNSET.** This is much broader than previous law, which only allows “sneak and peek” searches/seizures in emergencies and for records held by third parties. Now they can “sneak and peek” in your business, your car and your home – even if there’s no emergency. This section was not in the bill reported by the Judiciary Committee, and was slipped into the bill that went to the floor by the Administration. The Justice Department has confirmed that 90% of sneak and peek warrants are for non-terrorism cases.
- Section 206, Roving John Doe Wiretaps: lets the FBI to get warrants in intelligence investigations that neither identify the person or the phone. This section could be easily fixed to reflect criminal law, which allows a roving wire tap when the person is identified with particularity, and allows a “John Doe” wire tap when the phone is identified. It could also be improved by requiring the FBI to ascertain that the target is actually using the phone before it starts recording the conversation. The FBI should not be able to get a wiretap order when it can’t even name either a person or a place.
- Sections 214/ 216, Pen Registers/Trap and Trace: lowered the standard for getting PR/TT orders, which record the phone numbers and the internet and email addresses that you have contact with. Civil liberties would be protected by making sure that intelligence orders (214) are directed at an “agent of a foreign power,” or someone in contact with one and that criminal orders (216) don’t get the content of e-mails or internet communications.

OTHER PROBLEMS IN THE PATRIOT ACT:

- Section 805, Material Support Crime: lets the government prosecute anyone who gives “material support” to a terrorist or terror group. While this statute has long been in effect, the PATRIOT Act added “expert” advice to the list of offenses, and was used to prosecute a man who ran a website for Muslims, and was used by one user to advocate violence. He was acquitted by the jury. It could also be used to prosecute those who give humanitarian aid, such as medical advice, or instructions on how to build a water purification system, when working with terrorist organizations is the only way to get relief to the county’s citizens. Three courts have found this provision UNCONSTITUTIONAL.
- Lack of Sunsets: Oversight of the PATRIOT has been sporadic at best, and we received information on its use only because the provisions were sunseting and the Justice Department had to come back to Congress for reauthorization. This bill compromises our oversight role by making everything permanent. Event the 10 year sunset for Section 206 and 215 are so far in the future they’re almost meaningless.